

## REMARKS

Reconsideration of this application in light of the present amendment and remarks is respectfully requested.

Claims 1-7 and 13-17 have been rejected.

Claims 2-3, 5-7, 14-15 and 17 have been canceled, without prejudice.

Claims 8-12 and 18 were previously canceled.

Claim 19 has been added.

Claims 1, 4, 13 and 16 have been amended.

Claims 1, 4, 13, 16 and 19 are pending in this application.

### **Rejection under 35 U.S.C. §112, 1<sup>st</sup> paragraph**

Claims 4, 7 and 16 have been rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claim 7 has been canceled and claims 4 and 16 have been amended to include specific recitations from the text on page 19 line 22 to page 20 line 3.

Therefore, applicant respectfully requests that the Examiner withdraw this rejection.

### **Rejection under 35 U.S.C. §103(a)**

Claims 1-7 and 13-17 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Casaccia et al. (US2002/0177432, hereinafter “Casaccia”) in view of the Applicant Admitted Prior Art. This rejection is respectfully traversed.

Independent claim 1 has been amended to recite that the communication device is a mobile station that includes a call gapping list of telephone number of call destination nodes in order to prevent the mobile station from attempting to even begin a call to an overloaded destination node. Support for this can be found in the text on page 14 lines 20-25 and page 20 line 25 to page 21 line 1.

Casaccia discloses a base station that has a call gapping list of predefined groups of mobile stations (para. 38-39). Particular phone numbers of mobile stations are not part of the list, only general group identifiers. When the base station desires to block calls *originating* from a certain percentage of the total mobile stations, the base station sends out a message to the mobile stations identifying the particular group(s) of mobile stations it wishes to block. The base station does not send out its list to the mobile stations, only the group identifier(s). If a mobile

station recognizes that it is within an identified group, then it will not *originate* any calls until it receives an indication that its group is no longer blocked.

The admitted prior art describes a network exchange that keeps a list of telephone numbers of overloaded destination nodes to be blocked. However, this art does not describe sending this list to mobile stations. As a result, mobile stations do not know that destination nodes are overloaded and can still try and contact these overloaded destination nodes by making calls through their base stations to the network exchange, which ultimately blocks the calls. However, this scenario still wastes resources from the mobile stations trying to make calls that they do not know will be blocked, which adds to consumer frustration.

In summary, the cited references include; i) a list of phone numbers, ii) the list is *not* sent to mobile stations, iii) the list is utilized in a base station or exchange, iv) the list identifies telephone numbers of overloaded mobile stations, v) overloaded mobile stations may be contacted by the base station, and vi) calls to overloaded mobile stations are still attempted.

In contrast, applicant's invention includes; a) a list of phone numbers, b) the list *is* sent to mobile stations, c) the list *is* utilized in the mobile stations, d) the list identifies telephone numbers of overloaded mobile stations, e) overloaded mobile stations *are not* contacted by the base station but other mobile stations are, and f) calls to overloaded mobile stations are *not* attempted in the first place, thereby providing the optimum saving of resources. In other words, the cited art is missing applicant's elements b), c), e) and f). Accordingly, even though both inventions address the same problem, the solutions presented are completely different and consist of many completely opposite elements. As a result, the cited art teaches away from applicant's invention.

Accordingly, applicant respectfully submits that amended claim 1 is patentable and non-obvious over the cited art, and should be allowed.

Claim 4 has been amended to reflect that the network entity sends call gapping instructions to a select number of target users receiving a different grade of service from other users, explicit support for which can be found on page 19 line 22 to page 20 line 3.

None of the cited art suggest or disclose this feature.

Accordingly, applicant respectfully submits that amended claim 4 is patentable and non-obvious over the cited art, and should be allowed.

Independent claim 13 has been amended to include the same recitations as amended claim 1, in method form, and is therefore deemed allowable as well for the same reasons.

Dependent claim 16 has been amended to include the same recitations as amended claim 4, and is therefore deemed allowable as well for the same reasons.

Independent claim 19 has been added, and includes all of the recitations of claims 13 and 16 combined, and is therefore deemed allowable as well for the same reasons.

Therefore, applicant respectfully requests that the Examiner withdraw the above rejection.

The other references of record have been reviewed and applicant's invention is deemed patentably distinct and nonobvious over each taken alone or in combination.

For the foregoing reasons, applicants respectfully request that the above rejections be withdrawn.

Inasmuch as this amendment distinguishes all of the applicants' claims over the prior art references, for the many reasons indicated above, passing of this case is now believed to be in order. A Notice of Allowance is earnestly solicited.

No amendment made was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim, unless applicant has argued herein that such amendment was made to distinguish over a particular reference or combination of references.

In the event that the Examiner deems the present application non-allowable, it is requested that the Examiner telephone the Applicants' attorney at the number indicated below so that the prosecution of the present case may be advanced by the clarification of any continuing rejection or through an Examiner's amendment.

Authorization is hereby given to charge any fees necessitated by actions taken herein to Deposit Account 50-2117.

Respectfully submitted,  
**McDonald et al.**

**Customer Number 22917**  
Motorola, Inc.  
Law Dept. - 3<sup>rd</sup> floor  
1303 E. Algonquin Rd.  
Schaumburg, IL 60196

By: /Brian Mancini/  
Brian M. Mancini  
Attorney for Applicant(s)  
Registration No. 39,288  
Phone: (847) 576-3992  
FAX: (847) 576-3750